

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of ROSEMARIE V. SUTTON and DEPARTMENT OF HEALTH & HUMAN  
SERVICES, SOCIAL SECURITY ADMINISTRATION, Charlottesville, Va.

*Docket No. 97-2037; Submitted on the Record;  
Issued June 10, 1999*

---

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,  
A. PETER KANJORSKI

The issues are: (1) whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective September 18, 1995 on the grounds that her 1989 and 1987 accepted employment injuries of cervical strain, thoracic strain and shoulder strain had resolved; and (2) whether appellant has met her burden of proof to establish that she developed an emotional condition as a consequential injury.

The Board has carefully considered the issues in question, the entire case record and appellant's contentions on appeal. The Board finds that the decision of the Office hearing representative dated November 6, 1996 is in accordance with the facts and the law in this case and hereby adopts the findings and conclusions of the hearing representative with respect to the termination of appellant's compensation on September 18, 1995.<sup>1</sup>

The hearing representative, however, remanded the case for further development to resolve a subsequent conflict in medical opinion evidence created by a well-reasoned psychiatric report submitted by appellant after the date of termination of compensation but prior to the date of the hearing, regarding whether appellant developed an emotional illness as a consequential injury of her accepted cervical, thoracic and shoulder strains.

Upon remand, the Office developed a statement of accepted facts and referred appellant with questions to be answered<sup>2</sup> and the complete case record to Dr. C. Knight Aldrich, a

---

<sup>1</sup> The hearing representative affirmed the September 18, 1995 termination of compensation, finding that the weight of the medical evidence of record at that time supported that appellant no longer suffered residuals of her accepted muscular strain injuries.

<sup>2</sup> The questions to be answered were: what was appellant's diagnosis, what was the history and genesis of the diagnosed condition(s), were any of these conditions caused by either the October 14, 1987 or the April 6, 1989 work injuries, with rationale demonstrating precipitation, aggravation or acceleration and if any condition was created by the work injuries, what was its current status?

Board-certified psychiatrist, for a well-rationalized opinion to resolve the newly created conflict in psychiatric opinion evidence between Dr. Joseph J. David, appellant's Board-certified psychiatrist and Dr. Robert S. Brown, the Office's second opinion Board-certified psychiatrist.

By report dated March 7, 1997, Dr. Aldrich diagnosed "pain disorder associated with both psychological factors [primarily] and general medical condition [secondarily]" and "dysthymic disorder, relatively mild;" he discussed multiple precipitating and perpetuating factors unrelated to appellant's employment injuries, noted that the injury of October 14, 1987 increased strain, but not enough to cause decompensation and opined, regarding the injury of April 6, 1989:

"[Appellant] was close to decompensation at the time and if it had not been the injury it would soon have been something else that provided the proverbial straw which broke the camel's back. However, of all the precipitants, the injury appears to have been the most immediate precipitant of her psychiatric illness."

Dr. Aldrich noted that he chose the pain disorder associated with both psychological and general medical factors as appellant's diagnosis rather than somatoform pain disorder because he felt that appellant's cervical spondylitis produced "enough intermittent discomfort to focus the psychogenic pain."

By decision dated March 25, 1997, the Office rejected appellant's claim for a consequential emotional condition as "the medical evidence of record was not sufficient to establish that [her] condition was caused by the implicated employment factors." The Office discussed the burden to establish the causal relationship of the claimed condition to the "cited factors of employment" and noted that Dr. Aldrich "chose to respond speculatively by relating the concurrence [sic] of the claimed condition to employment factors." The Office speculated that Dr. Aldrich "seems to infer that the emotional condition may be self-generated in the sense that [appellant's] symptomatology was destined to manifest itself in time as a logical consequence of predisposing nonwork[-]related factors regardless of the timing and location of the actual precipitant." The Office concluded that the record remained insufficient to demonstrate causal relation between the claimed condition and "the cited employment factors" and noted that both appellant's physicians, Dr. David and the impartial medical examiner, Dr. Aldrich, were based on interpretations of temporal coincidences of events. The Office concluded that both Dr. David's and the impartial medical examiner's opinions lacked medical rationale and therefore lacked the necessary probative value to establish the merits of the claim, such that appellant had failed to meet her burden of proof.

The Board finds that this case is not in posture for decision due to an unresolved conflict in medical opinion evidence.

While appellant has the burden of proof to establish entitlement to compensation, the Office shares the responsibility in the development of the evidence.<sup>3</sup> The Board has held that in a situation where the Office obtains an opinion from an impartial medical specialist for the

---

<sup>3</sup> *Leonard W. Waggoner*, 35 ECAB 461 (1983); *Daniel J. Gury*, 32 ECAB 261 (1980).

purpose of resolving a conflict in the medical evidence and the specialist's opinion requires clarification or elaboration, the Office has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report.<sup>4</sup>

In this case, Dr. Aldrich's report is not responsive to several of the questions asked of him and was unclear in his meaning with his determination that "of all the precipitants, the injury appears to have been the most immediate precipitant of her psychiatric illness." The Board notes that this could be interpreted as implicating either a temporal or a causal relationship and lacks any rationale to aid in determination of which was intended. Clearly, therefore, Dr. Aldrich's report requires clarification and is, consequently, insufficient to resolve the existing conflict in medical opinion evidence.<sup>5</sup>

As the conflict in medical opinion evidence remains, the case is be remanded for further development, to be followed by a *de novo* decision on the issue of whether appellant developed a consequential emotional condition causally related to her accepted employment injuries which ceased as of September 18, 1995.

Therefore, the decision of the Office of Workers' Compensation Programs dated November 6, 1996 is hereby affirmed, but the decision of the Office dated March 25, 1997 is hereby set aside and the case is remanded for further development in accordance with this decision and order of the Board.

Dated, Washington, D.C.  
June 10, 1999

George E. Rivers  
Member

Willie T.C. Thomas  
Alternate Member

A. Peter Kanjorski  
Alternate Member

---

<sup>4</sup> *Harold Travis*, 30 ECAB 1071 (1979).

<sup>5</sup> The Board further notes that if an impartial specialist is unable to clarify or elaborate on his original report or if his supplemental report is also vague, speculative, or lacking in rationale, the Office will submit the case record and a detailed statement of accepted facts to another impartial specialist for the purpose of obtaining his rationalized medical opinion on the issue; see *Harold Travis*, *supra* note 4; *Leonard W. Waggoner*, *supra* note 3.